



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUAN ARAUJO, on behalf :  
of himself and other :  
similarly situated, :

Plaintiffs, : 08 Civ. 9442 (PAC) (HBP)

-against- : ORDER

787 EIGHTH AVENUE CORP., :  
doing business as :  
"Brazil Grill," :

Defendant. :

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PITMAN, United States Magistrate Judge:

Plaintiff commenced this putative collective action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq., and the New York State Labor Law, alleging that he did not receive overtime pay as required by those statutes.

Plaintiff and defendant have entered into a tentative, confidential settlement that provides, among other things, that plaintiff will be paid a sum of money to be divided between plaintiff and his attorney in amounts set forth in the settlement agreement, plaintiff's claims against defendant will be dismissed with prejudice and the claims of any other potential plaintiffs will be dismissed without prejudice.

On August 7, 2009 and October 30, 2009, I issued two Orders declining to approve the proposed settlement, primarily on

the ground that I believed it to be inadequate on the record then before me. Familiarity with those two Orders is assumed.

On November 6, 2009, I held a tape-recorded conference call with counsel during which plaintiff's counsel conceded, for purposes of settlement that defendant's method of computing the regular hourly rate (weekly amount paid ÷ number of hours actually worked) is the more appropriate method. Plaintiff's counsel also conceded, again for purposes of settlement, that there was a fairly triable issue concerning the availability of the tip credit to defendant.

These stipulations, particularly the former, substantially reduce the amount that plaintiff could potentially recover at trial if he prevailed. In light of these stipulations, I conclude that the settlement is fair and reasonable, and, therefore, I approve the settlement.

Dated: New York, New York  
November 18, 2009

SO ORDERED

  
HENRY PITMAN  
United States Magistrate Judge

Copies transmitted to:

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